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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,577	12/29/2000	Ross Miller	AT00092	8368

24710 7590 02/03/2003

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EXAMINER

WILSON, JOHN J

ART UNIT PAPER NUMBER

3732

DATE MAILED: 02/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/751,577

Applicant(s)

MILLER, ROSS

Examiner

John J. Wilson

Art Unit

3732

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 January 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 21 January 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

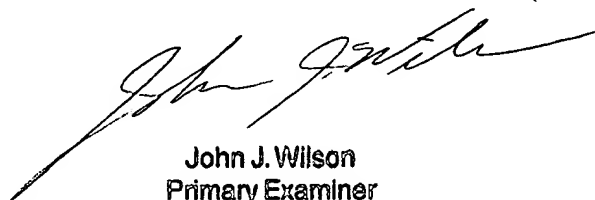
Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: With respect to claims 1-5, the claims are to a structure, not a method. Structure is properly met if the structure is shown by the prior art, regardless of the process used to make the structure. Therefore, "digitally generated" is properly not given patentable weight. The method steps claiming how and when the articles are intended to be used are matters of intended use of known structures and not given patentable weight. The claims are limited to "polymeric" shells. This material, while well known in the art, is not specifically talked about in Andrews, and that is the purpose for the use of the Bergersen reference. As to all of the claims, Kurz uses conditional language, "can be" or "may" when describing the use of the invention without any other orthodontic appliances. This does not negate the teaching of Kurz that a solution to the problem of moving teeth can be solved with the use of plural shells. Kurz does not teach that the invention cannot be use with other appliances. Further, applicant's invention, may or may not be used with other appliance, and therefore, no criticality can be attributed to this feature. With respect to Andrews and Chishti et al, Chishti teaches that more than one shell can be used to solve the problem of moving teeth. It would be obvious to one of ordinary skill in the art to replace the one of Andrews with plural devices. That Chishti also teaches that the shells can replace wires and brackets does not obviate this..



John J. Wilson
Primary Examiner